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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 BAKERY EQUIPMENT.COM, a  
9 Washington corporation,

10 Plaintiff,

11 v.

12 COASTAL FOODS, INC., a Texas  
13 corporation<sup>1</sup>,

14 Defendant.

CASE NO. C11-5615BHS

ORDER DENYING  
DEFENDANT'S MOTION TO  
DISMISS OR TRANSFER  
VENUE, PLAINTIFF'S  
MOTION TO STRIKE, AND  
PLAINTIFF'S MOTION FOR  
AN EXTENSION OF TIME

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16 This matter comes before the Court on Defendant Coastal Foods, Inc.'s  
17 ("Coastal") motion to dismiss or transfer venue (Dkt. 9) and Plaintiff Bakery  
18 Equipment.com's ("Bakery") motion for an extension of time (Dkt. 12) and motion to  
19 strike (Dkt. 17). The Court has reviewed the briefs filed in support of and in opposition to  
20 the motions and the remainder of the file and hereby denies the motions for the reasons  
21 stated herein.

22 **I. PROCEDURAL HISTORY**

23 On June 8, 2011, Bakery filed a complaint in Peirce County Superior Court for the  
24 State of Washington. Dkt. 2-1 at 2-17 ("Complaint"). Bakery asserts causes of action  
25 against Coastal for breach of contract, unjust enrichment, quantum meruit, and fraud. *Id.*

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27 <sup>1</sup> Although the headings of the parties' briefs state that Coastal is a Washington  
28 corporation, Coastal is actually a Texas corporation.

1 On October 13, 2011, Coastal filed a motion to dismiss for lack of personal  
2 jurisdiction or, in the alternative, to transfer venue. Dkt. 9. On October 28, 2011, Bakery  
3 filed a motion for an extension of time to respond. Dkt. 12. On November 4, 2011,  
4 Bakery responded. Dkt. 17. On November 11, 2011, Coastal replied. Dkt. 18.

## 5 II. FACTUAL BACKGROUND

6 Bakery advertised a previously owned oven for sale for \$195,000. Complaint, ¶ 6.  
7 Coastal's president, William Evans, asserts that on March 15, 2011, he discussed the oven  
8 during a telephone conversation with Bakery's representative, Rick Evans. Dkt. 10,  
9 Declaration of William Evans ("Evans Dec."), ¶ 5. William Evans also asserts that Rick  
10 Evans would not release the location of the oven for Coastal's inspection unless William  
11 Evans returned a signed quote to Bakery. *Id.* William Evans claims that he did not have  
12 the opportunity to negotiate the quote. *Id.*

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14 On March 16, 2011, William Evans signed a quote for the oven. *Id.*, Exh. 1. The  
15 quote states that a signature on the document "verifies that [the signer has] read,  
16 understand[s], and agree[s] to the BakeryEquipment.com Sales Agreement." *Id.* The  
17 document also provides that the signed quote "serves as your purchase order for the  
18 equipment listed above," which was the oven. *Id.* The Sales Agreement provides that the  
19 "agreement shall be interpreted in accordance with the laws of the State of Washington,"  
20 and that "[a]ny legal action to enforce the terms of [the] agreement shall be brought in  
21 Pierce County Superior Court , Tacoma, Washington." *Id.*, Exh. 2.

22 Bakery then informed Coastal that the oven was located in New Jersey. Evans  
23 Dec., ¶ 6. Coastal sent employees to New Jersey to inspect the oven. *Id.*, ¶ 7. Upon  
24 arrival in New Jersey, the employee

25 was told by Wasco Tech Company, Inc. ("Wasco") that (1) Bakery was not  
26 the Oven's owner; (2) Harvest Time Bread Company, and Wasco, both of  
27 which are New Jersey Companies (the "New Jersey Owners") did not  
28 authorize Bakery to market or sell the Oven; and (3) if CFI wanted to  
purchase the Oven, CFI would have to do so with the New Jersey Owners.

1 *Id.*, ¶ 8. Coastal subsequently negotiated the purchase of the oven with the New Jersey  
2 Owners. *Id.*

### 3 4 **III. DISCUSSION**

#### 5 **A. Motion for an Extension**

6 Bakery moved the Court for a one-week extension of time to respond to Coastal's  
7 motion. Dkt. 12. Coastal did not respond, but must have agreed to an extension because  
8 Bakery's response was late and Coastal did not object. Therefore, the Court denies  
9 Bakery's motion as moot.

#### 10 **B. Motion to Strike**

11 Bakery moves the Court to strike certain portions of the Evans declaration because  
12 the evidence lacks foundation, is hearsay, or is irrelevant. Dkt. 17 at 4. When a district  
13 court declines to hold an evidentiary hearing on a motion to dismiss, "the plaintiff need  
14 only make 'a prima facie showing of jurisdictional facts to withstand the motion to  
15 dismiss.'" *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir.  
16 2010) (quoting *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006)).  
17 "[U]ncontroverted allegations in plaintiff's complaint must be taken as true," *id.*  
18 (quoting *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002))  
19 (alteration omitted), and, in deciding whether a prima facie showing has been made, "the  
20 court resolves all disputed facts in favor of the plaintiff." *Pebble Beach*, 453 F.3d at  
21 1154.

22  
23 With these rules in mind, the Court finds that there is no need to strike the  
24 questioned material. Therefore, the Court denies Bakery's motion.

#### 25 **C. Jurisdiction**

26 The Complaint alleges that Pierce County, Washington is the proper venue  
27 because  
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1 (a) the contract at issue was formed in Washington (b) the contract was  
2 breached in Washington (c) the defendant's wrongful and tortuous conduct  
3 caused damage to plaintiff in Washington and (d) the contract provides that  
any legal action shall be filed in Pierce County Superior Court.

4 Complaint, ¶ 5. The first issue before the Court is whether the forum selection clause  
5 should be enforced.

6 Forum selection clauses are presumptively valid and any party challenging such a  
7 clause bears a "heavy burden to show that it should be set aside." *See M/S Bremen v.*  
8 *Zapata Off-Shore Co.*, 407 U.S. 1, 9, 15, 17 (1972). There are

9 three reasons that would make enforcement of a forum selection clause  
10 unreasonable: (1) if the inclusion of the clause in the agreement was the  
11 product of fraud or overreaching; (2) if the party wishing to repudiate the  
12 clause would effectively be deprived of his day in court were the clause  
enforced; and (3) if enforcement would contravene a strong public policy of  
the forum in which suit is brought.

13 *Murphy v. Schneider National, Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2004) (internal  
14 quotations omitted).

15 In this case, Coastal argues that enforcing the forum selection clause "would be  
16 unreasonable and unjust." Dkt. 9 at 3. Coastal contends that all of Bakery's claims are  
17 based on Coastal's purchase of the oven, which "has no relation whatsoever to  
18 Washington." *Id.* at 4. Coastal's contentions are misplaced. Bakery's first claim is based  
19 on an allegedly valid contract between the parties, Bakery's performance, and Coastal's  
20 failure to perform. While Coastal's contract with the New Jersey owners and subsequent  
21 purchase of the oven may have nothing to do with Washington, its agreement with  
22 Bakery, alleged non-performance, and consent to suit in Washington are entirely different  
23 matters. Therefore, the Court denies Coastal's motion to set aside the forum selection  
24 clause because Coastal has failed to meet its "heavy" burden.

25 **D. Venue**

26 "For the convenience of parties and witnesses, in the interest of justice, a district  
27 court may transfer any civil action to any other district or division where it might have  
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1 been brought.” 28 U.S.C. § 1404(a). “Weighing of the factors for and against transfer  
2 involves subtle considerations and is best left to the discretion of the trial judge.”  
3 *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979).

4 In this case, Coastal argues that the Court should transfer venue to the Southern  
5 District of Texas because (1) that is where Coastal maintains its principal office and (2)  
6 that is where a substantial part of the alleged events occurred. Dkt. 9 at 9. While the  
7 former may be true, Coastal has failed to persuade the Court that the latter assertion is  
8 true. The alleged events are that the parties entered into a contract and Coastal failed to  
9 perform. There simply is no showing at this time that a substantial portion of these events  
10 occurred in Texas. Moreover, the parties agreed that Washington law would govern any  
11 dispute and this Court is more familiar with Washington law. Therefore, the Court denies  
12 Coastal’s motion to transfer venue without prejudice.

#### 13 IV. ORDER

14 Therefore, it is hereby **ORDERED** that Coastal’s motion to dismiss or transfer  
15 venue (Dkt. 9) and Bakery’s motion for an extension of time (Dkt. 12) and motion to  
16 strike (Dkt. 17) are **DENIED**.

17 DATED this 20th day of December, 2011.

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21 BENJAMIN H. SETTLE  
22 United States District Judge  
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